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8 BEFORE THE BOARD
OF PODIATRIC MEDICINE
9 MEDICAL BOARD OF CALIFORNIA
STATE OF CALIFORNIA
10

11 In the Matter of the Petition to Revoke
Probation of:

12 **DONALD W. ALEXANDER, DPM**
13 1845 Jefferson St.
Napa, CA 94559

14 Podiatric Medicine License No. E 1737
15

16 Respondent.
17
18

No. D1-91-11490

**PETITION TO REVOKE
PROBATION**

19 1) JAMES H. RATHLESBERGER, Complainant, makes and files this
20 Petition to Revoke Probation solely in his official capacity as Executive Officer of the
21 Board of Podiatric Medicine of the State of California.

22 **LICENSE HISTORY**

23 2) Podiatric Medicine License No. E 1737 was issued to Donald W.
24 Alexander, DPM ("respondent") on July 17, 1974 by the Board of Podiatric Medicine
25 ("Board"). Respondent's license was revoked effective January 18, 1995, pursuant to an
26 adopted Decision based on a stipulation between respondent and the board. [Decision
27 D5605, attached as Exhibit 1]. By his stipulation, respondent acknowledged that cause

1 existed to revoke or suspend his podiatric medicine license based on his admitted
2 violations of Business and Professions Code section 2234(c), as alleged in the First
3 Cause for Disciplinary Action and violation of Business and Professions Code section
4 2234(b) as alleged in the Fourth Cause for Disciplinary Action in the Accusation filed
5 in case number D-5605. Revocation of respondent's license was stayed during a
6 probationary period of three years. Respondent's license was suspended during the
7 probationary period effective November 4, 1995, when respondent failed to appear as
8 ordered in the Decision for his second attempt to pass the oral clinical examination.
9 The terms of his probation state that failure to take the required examination is
10 construed as a failure of the examination and a violation of probation; respondent had
11 failed his first attempt to pass the examination given on May 6, 1995. The terms of
12 probation require license suspension if respondent fails the first two exams.
13 Respondent was personally notified of the license suspension on November 9, 1995.

14 STATUTES

15 3) Section 2222 of the Business and Professions Code¹ provides that the
16 California Board of Podiatric Medicine shall enforce and administer Article 12 (§§ 2220
17 et seq., found in chapter 5 of division 2 of the Code) as to podiatry certificate holders;
18 any acts of unprofessional conduct or other violations proscribed by the chapter are
19 applicable to licensed podiatrists. Section 2222 further provides that wherever the
20 Division of Medical Quality is vested with the authority to enforce and carry out this
21 chapter as to licensed physicians and surgeons, the California Board of Podiatric
22 Medicine also possesses the same authority as to licensed podiatrists.

23 4) Section 2227 authorizes the board to order probation for a licensee
24 found guilty of unprofessional conduct.

25
26
27 ¹ All statutory references are to the Business and Professions Code, unless
otherwise stated.

1 5) Section 2497(a) provides that the California Board of Podiatric
2 Medicine is mandated to enforce all provisions of article 12, which article includes
3 Sections 2234 and 2236.1.

4 6) Section 2497.5(a) allows the Board to request an order from the
5 administrative law judge hearing the disciplinary proceeding directing any licensee found
6 guilty of unprofessional conduct to pay a sum not exceeding the reasonable costs of
7 investigation and prosecution of the case.

8 TERMS OF PROBATION

9 7) As set forth in the administrative Decision (Exhibit 1, attached), the
10 express terms of respondent's probation require, among other conditions, that:

11 a) Within 60 days of the January 18, 1995 effective date of
12 the Decision, respondent was to have submitted to the
13 Board for approval a course in Ethics, to be completed
14 during the first year of probation;

15 b) Respondent was to have taken--and passed by his third
16 attempt--the oral clinical examination given May 6, 1995,
17 and, if necessary, November 4, 1995 and May 4, 1996.
18 Failure or refusal to take the required exam is deemed a
19 failure of the examination and a violation of probation.
20 If respondent fails to take and pass the oral
21 clinical examination within the first two regularly scheduled
22 examinations, respondent shall cease the practice of
23 podiatric medicine and respondent's license will be
24 suspended until respondent takes and passes the third
25 regularly scheduled oral clinical examination.

26 c) Respondent was ordered to pay \$6,000.00, in four equal
27 quarterly installments, to the Board in recompense for the
costs of investigation of this case. The first \$1,500.00
payment was due 30 days after the January 18, 1995,
effective date of the decision.

 d) Respondent was ordered to submit quarterly reports to
the Board, stating whether respondent is in compliance with
the terms of probation.

 8) Senior Investigator Everett Gremminger of the Division of Medical
Quality personally met with respondent on April 14, 1995. Respondent was given
another copy of Decision D5605. The specific terms of probation were presented and

1 explained to Respondent. Investigator Gremminger informed respondent of the due-
2 dates of the quarterly reports and personally provided respondent with the report
3 forms.

4 FIRST CAUSE FOR PROBATION REVOCATION

5 9) Respondent has failed to comply with the express terms of probation
6 as set forth in the Decision in that: as of December 18, 1995, respondent has not made
7 any of the four \$1,500.00 quarterly payments of costs of investigation. The final
8 payment was to have been made by November 18, 1995. Respondent has not
9 contacted the Board or his probation monitor regarding this debt.

10 10) Respondent's conduct as described in paragraph 10 constitutes a
11 violation of the probationary terms of the Decision and is therefore cause to revoke
12 respondent's probation and carry out the order of revocation that was stayed.

13 SECOND CAUSE FOR PROBATION REVOCATION

14 11) Respondent has not, as of December 18, 1995, submitted to the
15 Board for approval an Ethics course, as the decision ordered respondent to do by
16 March 18, 1995, nor has respondent shown proof to the board of having taken an
17 Ethics course.

18 12) Respondent's conduct as described in paragraph 12 constitutes a
19 violation of the probationary terms of the Decision and is therefore cause to revoke
20 respondent's probation and carry out the order of revocation that was stayed.

21 THIRD CAUSE FOR PROBATION REVOCATION

22 13) Respondent has not submitted the first three quarterly reports--due
23 April 18, 1995, July 18, 1995 and October 18, 1995 as required by the express terms of
24 the Decision.

25 14) Respondent's conduct as described in paragraph 14 constitutes a
26 violation of the probationary terms of the Decision and is therefore cause to revoke
27 respondent's probation and carry out the order of revocation that was stayed.

1 FOURTH CAUSE FOR PROBATION REVOCATION

2 15) Respondent took but failed to pass the oral clinical examination he
3 was ordered to take on May 6, 1995. Respondent applied and paid to take the
4 required November 4, 1995 oral clinical examination but failed to appear or give notice
5 of his inability to take that examination. Pursuant to the terms of the Decision,
6 respondent's failure to take the exam constitutes failure of the examination.

7 16) Respondent's conduct as described on paragraph 16 constitutes a
8 violation of the probationary terms of the Decision and is therefore cause to revoke
9 respondent's probation and carry out the order of revocation that was stayed.

10
11 PRAYER

12 WHEREFORE, complainant requests that the Board hold a hearing on
13 the matters alleged herein and thereafter issue a Decision:

14 1) Revoking the probation ordered in the Decision in Case No. D5605
15 and carrying out the order revoking respondent's license which had been stayed;

16 2) Ordering the costs of investigation and prosecution as authorized by
17 Business and Professions Code section 2497.5; and

18 3) Taking such other or further action as is deemed just and proper to
19 protect the public health, safety and welfare.

20
21 DATED: 1-16-96

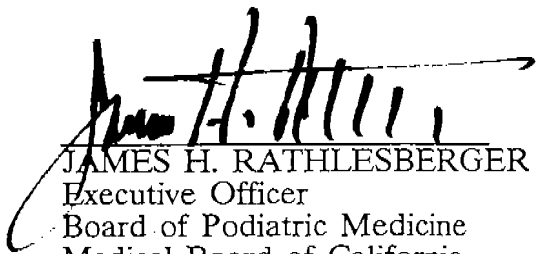
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24 JAMES H. RATHLESBERGER
25 Executive Officer
26 Board of Podiatric Medicine
27 Medical Board of California
State of California

EXHIBIT 1

BEFORE THE
BOARD OF PODIATRIC MEDICINE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

DONALD W. ALEXANDER
1845 Jefferson Street
Napa, California 94559

Doctor of Podiatric Medicine
License No. E-1737

Respondent.

No. D-5605

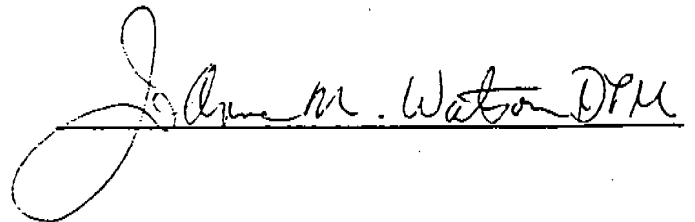
OA# No. N-9401126

DECISION

The attached Proposed Decision of the Administrative Law
Judge is hereby adopted by the Board of Podiatric Medicine as its
Decision in the above-entitled matter.

This Decision shall become effective on January 18, 1995.

IT IS SO ORDERED December 19, 1994.


James M. Watson DPM

BEFORE THE
BOARD OF PODIATRIC MEDICINE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

No. D-5605

DONALD W. ALEXANDER
1845 Jefferson Street
Napa, California 94559

OAH No. N-9401126

Doctor of Podiatric Medicine
License No. E-1737

Respondent.

PROPOSED DECISION

On September 19-20, 1994, in Sacramento, California, Catherine B. Frink, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Mara Faust, Deputy Attorney General, represented the complainant.

Respondent was present and was represented by Casey C. Marciniak, Attorney at Law, 1621 Executive Court, Sacramento, California 95864.

Evidence was received, and the parties entered into a stipulation to resolve the matter as set forth below.

FINDINGS OF FACT

I

Donald W. Alexander, D.P.M. ("respondent"), with the advice of his attorney Casey C. Marciniak, and James Rathlesberger, Executive Officer of the Board of Podiatric Medicine of the State of California ("BPM"), by and through its attorney Mara Faust, entered into the following stipulation:

A. Respondent has received and read Accusation Case No. D-5605 and the accompanying documents and fully understands their content, including the nature of the charges alleged which constitute cause for discipline against him.

B. Respondent is fully aware of his right to a hearing on the charges and allegations contained in the above-mentioned Accusation Case No. D-5605 and to any and all other rights which may be accorded him under the California Administrative Procedure Act; and that by entering into this Stipulation, he voluntarily waives his right to a hearing and to any and all other rights which may be accorded him under the California Administrative Procedure Act and the Code of Civil Procedure, including the right to judicial review.

C. James Rathlesberger, the complainant in this case, as the Executive Officer of the BPM issued the Accusation in his official capacity as such and not otherwise.

D. Respondent fully and voluntarily waives his right to a decision based on a hearing, reconsideration, and appeal and any and all other rights which may be accorded him under the California Administrative Procedure Act and the laws of the State of California as they may relate to Accusation Case No. D-5605.

E. All admissions of fact and conclusions of law contained in this Stipulation are made exclusively for this proceeding and any future proceeding between the BPM and the respondent and shall not be deemed to be admissions for any purpose in any other administrative, civil or criminal action, forum or proceeding.

F. Respondent's address of record is as set forth in the caption herein, and respondent's license history and status as set forth at paragraph 2 of the Accusation are true and correct as hereinafter set forth: On or about July 19, 1974, the BPM issued License Number E-1737 to respondent; said license is currently in full force and effect and was due to expire on September 30, 1994 unless renewed.

G. For purposes of the settlement of action pending against respondent in Accusation Case No. D-5605 and to avoid a lengthy administrative hearing, respondent admits the following:

1. With respect to the First Cause for Disciplinary Action, respondent admits that on June 21, 1990, he treated patient M.S. without the consent of M.S.'s representative, or M.S.'s treating physician, and failed to note his treatment of patient M.S. in her medical chart, and that this constitutes a violation of Business and Professions Code section 2234(c).

2. With respect to the Fourth Cause for Disciplinary Action, respondent admits the allegations of Paragraphs 20, 21, and 22 of the Accusation as amended, as follows:

a. On or about September 15, 1989, E.M., an 84 year old man, was seen by his attending physician at Piner's Nursing Home. As a result of the attending physician's examination of E.M., the doctor requested that Lelan Raymond, M.D., a surgeon, be contacted for debridement of E.M.'s right heel due to State IV decubitus.

b. On or about September 19, 1989, Dr. Raymond treated E.M., and advised E.M. that he needed surgery due to a severe gangrenous ulceration. The recommended treatment by Dr. Raymond was noted in E.M.'s medical records.

c. Or about September 20, 1989, without authorization from the treating physician, respondent treated E.M.'s gangrenous ulceration of the right foot and leg. Respondent debrided E.M.'s ulcer, and applied a dressing of Elase ointment, Garamyon antibiotic cream, an Unna boot and a Coban wrap. To apply this dressing in a place with inadequate circulation can cause extensive damage, a further spreading of the area of necrosis, and can cause pain to the patient. Respondent's treatment of patient E.M. was grossly negligent in violation of Business and Professions Code section 2234(b).

H. Complainant dismisses the Second, Third and Fifth Causes for Disciplinary Action in Accusation Case No. D-5605, with prejudice.

I. Based on the recitals and stipulations set forth above, the parties stipulated and agreed that the BPM shall issue the Order set forth below.

DETERMINATION OF ISSUES

The parties stipulated that cause for discipline of respondent's certificate was established pursuant to Business and Professions Code sections 2234(b) and 2234(c) by reason of Finding I.G.

ORDER

Podiatric Certificate No. E-1737 issued to respondent Donald W. Alexander, D.P.M., is revoked, provided, however, that said revocation is stayed, and respondent is placed on probation for three (3) years upon the following terms and conditions:

Ethics

A. Within 60 days of the effective date of this decision, respondent shall submit to the Board of Podiatric Medicine for its prior approval a course in Ethics, which respondent shall successfully complete during the first year of probation.

Examination, Oral Clinical

B. Respondent shall take and pass an oral clinical examination to be administered by the BPM or its designee on May 6, 1995 in San Francisco, California. If respondent fails this examination, respondent shall take and pass an oral clinical examination to be administered by the BPM or its designee on November 4, 1995 in Los Angeles, California. If respondent fails this examination, respondent shall take and pass an oral clinical examination to be administered by the BPM or its designee on May 4, 1996 in San Francisco, California. Refusal or failure to take any required examination shall be deemed a failure of the examination and a violation of probation. After three failures, respondent's license will be revoked. The respondent shall pay the cost of the examination(s). If the respondent fails to take and pass this examination within the first two regularly scheduled examination dates, the respondent shall cease the practice of podiatric medicine and respondent's license will be suspended until the respondent takes and passes a third oral clinical examination and is so notified by the BPM in writing. Failure to pass the required examination no later than 100 days prior to the first scheduled termination of probation shall constitute a violation of probation.

Costs

C. The respondent is hereby ordered to pay to the BPM the amount of \$6,000 in four quarterly payments of \$1,500 during the first year of probation. The first quarterly payment is due within 30 days from the effective date of this decision, with each subsequent payments due in three month intervals, and the last payment due by the tenth month of probation. These payments are for the recovery of the actual and reasonable costs of the investigation and prosecution of this matter as provided for in Section 2497.5 of the Business and Professions Code.

Obey All Laws

D. Respondent shall obey all federal, state and local laws, and all rules governing the practice of podiatric medicine in California.

Quarterly Reports

E. Respondent shall submit quarterly declarations under penalty of perjury, on forms provided by the BPM, stating whether there has been compliance with all the conditions of probation. Notwithstanding any provision for tolling of requirements of probation, during the cessation of practice respondent shall continue to submit quarterly declarations under penalty of perjury.

Surveillance Program

F. Respondent shall comply with the BPM's probation surveillance program.

Interview with Podiatric Medical Consultant

G. Respondent shall appear in person for interviews with the BPM's medical consultant, upon request, at various intervals and with reasonable notice.

Tolling for Cessation of Practice

H. In the event the respondent fails to satisfactorily complete any provision of the order of probation, which results in the cessation of practice, all other provisions of probation other than the submission of quarterly reports shall be held in abeyance until respondent is permitted to resume the practice of podiatry. All provisions of probation shall recommence on the effective date of resumption of practice. Periods of cessation of practice will not apply to the reduction of the probationary period.

Tolling for Out-of-State Practice or Residence

I. In the event respondent should leave California to reside or to practice outside the state, respondent must notify the BPM in writing of the dates of departure and return. Periods of residency or practice outside California will not apply to the reduction of this probationary period.

Completion of Probation

J. Upon successful completion of probation, respondent's certificate will be fully restored.

Violation of Probation

K. If respondent violates probation in any respect, the BPM, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the BPM shall have continuing jurisdiction until the matter is final, and no petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation pending against respondent.

Dated: October 13, 1994

Catherine B. Frink
CATHERINE B. FRINK
Administrative Law Judge
Office of Administrative Hearings